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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

ZENITH RADIO CORPORATION and NATIONAL UNION ELECTRIC CORPORATION,

Petitioners,

v.

MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD., *et al.*,

Respondents.

BRIEF FOR COMMITTEE TO PRESERVE AMERICAN COLOR TELEVISION (a.k.a. COMPACT) AS AMICUS CURIAE IN SUPPORT OF A PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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BRIEF IN SUPPORT OF THE ISSUANCE OF A WRIT OF CERTIORARI

The Committee to Preserve American Color Television (a.k.a. COMPACT) respectfully requests as *amicus curiae* that the United States Supreme Court issue a writ of certiorari to review the judgment and opinion of the Court of Appeals for the Third Circuit in *Zenith Radio Corp. v. Matsushita Electric Industrial Co., Ltd.*, 807 F.2d 44 (3rd Cir. 1986) or in the alternative, that the Court issue a writ of mandamus to the Court of Appeals because the Court of Appeals misconstrued this Court's mandate. This brief is filed, with the consent of all parties, in support of the Petition For Certiorari of Zenith Radio Corporation and National Union Electric Corporation.[1]

INTEREST OF AMICUS CURIAE

The Committee to Preserve American Color Television (a.k.a. COMPACT) is a coalition of labor organizations and firms in the television industry.[2] COMPACT, an unincorporated association formed in 1976, has participated in numerous proceedings before U.S. Government agencies and the U.S. courts for

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[1] Letters indicating consent have been filed with the Clerk.

[2] The members of COMPACT include: Allied Industrial Workers of America, International Union; American Flint Glass Workers Union of North America; Communications Workers of America; Corning Glass Works; Glass Pottery, Plastics and Allied Workers, International Union; Independent Radionic Workers of America; Industrial Union Department, AFL-CIO; International Association of Machinists and Aerospace Workers; International Brotherhood of Electrical Workers; International Union of Electronic, Electrical, Technical, Salaried and Machine Workers, AFL-CIO; Owens-Illinois, Inc.; United Furniture Workers of America; and United Steelworkers of America.

the purpose of eliminating unfair and injurious competition by foreign producers in the sale of television sets in the United States market. COMPACT's activities were motivated in large part by a need to maintain the employment base of an industry that has been victimized by the pervasive dumping practices of its foreign competition.

The labor union members of COMPACT represent the overwhelming majority of workers who are, or were, employed by all of the current United States television manufacturers as well as by many of the companies which manufacture components incorporated into television sets. For example, the Independent Radionic Workers of America, the International Association of Machinists and Aerospace Workers, the International Union of Electronic, Electrical, Technical, Salaried and Machine Workers, and the International Brotherhood of Electrical Workers represent Zenith workers at four plants located in Chicago and Melrose Park, Illinois, Evansville, Indiana, and Springfield, Missouri. Many of these Union members are minority workers who reside in urban areas where unemployment is high and alternative job opportunities are scarce. Although these four unions have a direct and substantial interest in this action, the interest of COMPACT's other members is equally significant. The proper enforcement of the Antidumping Act of 1916 will affect not only Zenith and its workers but the entire domestic consumer electronics industry as well. As will be developed in this brief, the future of this once healthy industry is dependent on the decision in this case, since the law it addresses is the only trade statute that can provide

compensatory redress to those firms and workers injured by the unfair practice of dumping.

REASONS FOR GRANTING THE WRIT

The Third Circuit's dismissal of the antidumping claims was not warranted by this Court's decision, which explicitly declined to review the Court of Appeals' decision regarding those claims, *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. ___, 106 S.Ct. 1348, 1352, n.3 (1986). Despite the Third Circuit's confusion regarding the scope of this Court's remand, only the antitrust judgment was reversed. By exceeding this Court's mandate, the Court of Appeals has committed an error that must be corrected either upon an application for a writ of mandamus, or upon a new appeal. *In re Sanford Fork & Tool Co.*, 160 U.S. 247, 257 (1895); *Vendo Co. v. Lektro-Vend Corp.*, 434 U.S. 425, 427-28 (1978).

A. The Antidumping Act of 1916 Provides a Unique Remedy for a Distinct Anticompetitive Practice

The inappropriateness of the Third Circuit's application of this Court's opinion to the antidumping claims raised by Zenith under the Antidumping Act of 1916[3] is underscored by the significant differences between the Sherman Act and the antidumping laws, and in particular, the distinct problems these statutes were intended to address. The practice of dumping—which, unlike violations of the Sherman Act, does not necessarily involve conspiracy, below marginal cost pricing or injury to competition—has been universally and formally condemned by the international com-

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[3] 39 Stat. 798, 15 U.S.C. § 72 (Supp. III 1985).

munity of nations because of resulting distortions to international trade, and the injury it is likely to cause to domestic firms and their workers.[4] The practice, which typically occurs in conjunction with a protected home market that is closed to outside competition, enables a foreign manufacturer to achieve economies of scale through excess production purposely created to lower overall per unit costs. The foreign manufacturer is then able to recover in its home market sales substantially all of its fixed costs and, at the same time, achieve substantial profits through sales at incremental prices in export markets.

Congress attempted to deal with the problem of dumping under two separate statutes. In the Antidumping Act of 1921,[5] Congress established a remedy pursuant to which the U.S. Customs Service imposes an additional duty on dumped imports in an amount equal to the approximate difference between high home market prices and low export prices. Since all duties collected under the 1921 Act are deposited in the U.S. Treasury, the purpose of this statute is clearly remedial rather than compensatory. In the Antidumping Act of 1916, Congress created a compensatory remedy pursuant to which firms injured on account of dumped imports could recover damages to compensate for their injuries.

The enforcement mechanism created by Congress in the 1916 Act responds to a different problem and

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[4] General Agreement on Tariffs and Trade, Article VI, 62 Stat. 3682.

[5] 42 Stat. 11, 19 U.S.C. § 160 *et seq.* (1976). Now codified under Title VII of the Tariff Act of 1930, as amended, 19 U.S.C. § 1673 (1986).

provides qualitatively different remedies than those established under the antitrust laws. The decision of the Third Circuit in this proceeding ignores the fundamental differences between the problems addressed by the Antidumping Act of 1916 and the Sherman Act by holding that a failure to present sufficient evidence under the Sherman Act justifies dismissal of the antidumping charges as well. 807 F.2d at 49. The Third Circuit's decision is therefore erroneous and, if allowed to stand, will destroy the carefully designed and comprehensive statutory scheme which Congress created to deal with this problem.

B. The Third Circuit's Error Has Adverse Implications for U.S. Workers in the Consumer Electronics Industry and Elsewhere

American workers are particularly aggrieved by the decision of the Third Circuit to the extent it eliminates the only effective remedy to the pervasive dumping that has been evidenced in this litigation. The American worker does not benefit from the availability of cheap imported television sets or cheap products of any kind that are sold in the United States at less than their fair value. Before the average American can become a consumer, he or she must first become a worker and earn the money to consume. Dumped imports of television receivers have cost American workers thousands of jobs over the last twenty years, notwithstanding the existence of a dumping finding on televisions from Japan under the 1921 Act that has been in effect since 1971. The effect of that administrative finding is limited by the fact that it was issued under a statute that was designed for remedial purposes only. The 1921 Act was not intended to compensate the domestic industry for

the injury suffered as a result of over fifteen years of pervasive dumping practices. Only the Antidumping Act of 1916 is available for that purpose.

The appropriateness and need for such compensation is obvious. The United States International Trade Commission has conducted 19 injury investigations concerning television receivers or components since 1970. Fourteen resulted in affirmative determinations of injury by reason of imports, most of which were dumped. In these proceedings, U.S. workers have consistently warned of the adverse implications of dumping. But the long-term decline in employment tells the story best. The number of production and related workers engaged in the assembly of color televisions declined from a peak of 41,434 in 1973 to 22,470 in 1979, a decline of 46 percent.[6] By 1983, the number dropped still further to 18,023.[7] When workers employed in supply industries are added (cabinets, picture tubes, components, etc.), the total jobs lost to imports is undoubtedly much higher.[8]

The effect of the Third Circuit's ruling must also be considered in connection with the message it carries to the foreign competition. It can be argued on the basis of the appellate court's analysis of this

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[6] *Color Television Receivers and Subassemblies Thereof,* Inv. No. TA-203-6, USITC Pub. 1068 (1980) at A-27.

[7] *Color Television Receivers from the Republic of Korea and Taiwan,* Inv. Nos. 731-TA-134 and 135 (final), USITC Pub. 1514 (1984) at A-21.

[8] There are no officially published data on employment trends in the supply segment of the color television industry but COMPACT estimates that there are at least two jobs in the supply segment of the television industry for every job associated with the final assembly of color televisions.

Court's "law of the case" that a foreign manufacturer can now dump with impunity into the American market without fear of liability for the compensatory damages to the industry injured by the practice of dumping. Indeed, to the foreign manufacturer, the ruling arguably carries the message that the injury inflicted by this predatory international trade practice can only be redressed under the same legal and evidentiary standards as a Sherman Act proceeding. This flies in face of the express congressional intent underlying the Antidumping Act of 1916.

The implications for U.S. workers in the television industry is obvious. For almost twenty years, U.S. workers have waged war on an unfair practice that has largely been responsible for the loss of more than 50 percent of its work force. Unfortunately, none of the preventative remedies pursued by U.S. workers in this industry were designed to compensate the industry for the losses it has suffered so that it is better able to provide jobs for the workers who depend upon it. The Antidumping Act of 1916 is unique to the extent that it is designed to provide for that compensation.

CONCLUSION

The Third Circuit's decision effectively deprives the U.S. television industry of the only chance of compensation for the injury suffered by reason of the universally condemned practice of dumping. We submit that the importance of this ruling and the consequences which it portends for U.S. industry and labor urgently requires this Court's attention and corrective action.

Respectfully submitted,

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